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ABSTRACT

Michigan has had responsibilities for educating the state's American Indians since the Comstock Agreement of 1934. A 1976 legislative act and its subsequent revisions provided for state institutions of higher education to grant free tuition to certain American Indians through the Michigan Indian Tuition Waiver (ITW) program. Eligible Indians had to have a certain percentage of Indian blood, meet pre-enrollment residency requirements, and satisfy requirements concerning degree programs and full- or part-time attendance. A 1996 study found that typical ITW recipients were first-generation college students, part-time college students, unmarried females with 2-4 dependents, 30 years old, and not eligible for most other forms of financial aid. Recipients' mean gross annual income was $22,000. Attempts in 1981 and 1994 to repeal the program failed, and in 1995 the legislature continued the program in spite of the governor's objection. In 1996 the legislature eliminated the ITW, but waiver amounts were folded into higher education base per-pupil funding of each state university and college. Continuation of the program thus depended on colleges and universities deciding to allocate state funding to tuition reimbursement. Since ITW grants are no longer a line item, the state cannot determine the amount of ITW revenue each university and community college provides in free tuition. Since 1976, 15,000 Native Americans have enrolled in the program. Twenty years later, approximately 70 percent of those enrolled had completed some sort of certificate or degree. (Contains 16 references and a list of colleges receiving ITW funds in 1996-97.) (TD)

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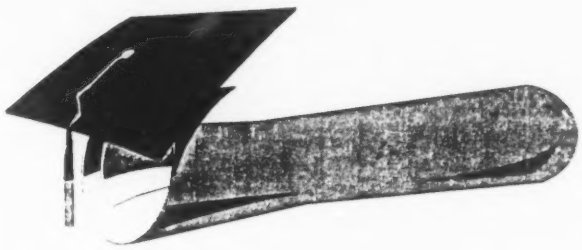
INDIAN TUITION WAIVER PROGRAM



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INDIAN TUITION WAIVER PROGRAM

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BACKGROUND

Over the years, there has been much discussion on the question of whether or not the State of Michigan is obligated to provide free tuition to Native Americans for a college education. This controversy dates back to the Washington Treaty of 1836, when the Ottawa and Chippewa Indians ceded much of western and northern Michigan to the federal government. In return, the federal government, pursuant to Article Four of the treaty, agreed to compensate the two tribal signatories with:

> *...Five thousand dollars per annum, for the purpose of education, teachers, school-houses, and books in their own language, to be continued twenty years, and as long thereafter as Congress may appropriate for the object....*

Subsequent land grant treaties have also included provisions to provide for the free education of Indians.

In accordance with the 1836 treaty, the United States Congress appropriated money for the construction of Indian schools in Mt. Pleasant, Bay Mills, and the Keweenaw Bay Indian Community and funded them until 1935.

In 1934, Michigan Governor William A. Comstock, in a letter to Harold L. Ickes, the United States Secretary of the Interior, petitioned the federal government to turn over to the state its interest in the Mt. Pleasant Indian School, which included a square mile of property and several buildings in excellent condition. The Governor wanted to use the school as a training center for the developmentally disabled. In part, the letter, commonly known as the "Comstock Agreement," states:

> *As Governor of the State, in accepting this grant, I acknowledge the condition that the State of Michigan will receive and care for in state institutions Indians resident with the state on entire equality with persons of other races and without cost to the federal government.*

In turn, the federal government agreed to turn over to the state the property for the following considerations:

- The state would take over the responsibility for Indian education as they were providing it at the time of the agreement;
- The state would be responsible for elementary and high school education;
- The state would provide job training;
- The state would provide college education in the same manner as the federal government had been providing it; and

- The state would build dormitories as needed to house Indian students whose homes were too far from the public school to allow normal daily attendance.

ORIGINS OF THE TUITION WAIVER PROGRAM

It was not until the surge of American Indian ethnic renewal, or the Red Power movement, in the 1960s and mid-1970s, that the State of Michigan began fully to meet its Comstock Agreement responsibilities.[1]

In 1965, the Legislature passed 1965 PA 300, which established the Michigan Commission on Indian Affairs.[2] An early priority of the commission was to persuade the state to create an Indian higher education scholarship program based on the obligations of the Comstock Agreement.

Progress in establishing an education scholarship program stalled until 1972 when a class-action lawsuit was filed against the University of Michigan. In the lawsuit, the plaintiffs, who included the Great Lakes Indian Youth Alliance, claimed that the university had violated Article 16 of the Treaty at Fort Meigs (1817), which, in their view, exchanged land use rights for education guarantees. Though the alliance lost the lawsuit, the controversy was an important element in the creation of the Michigan Indian Tuition Waiver (ITW) program.[3]

With the dismissal of the U of M lawsuit, American Indian university students and state tribal governments petitioned and received support from some African-American state lawmakers, including Representative Jackie Vaughn (now state senator) and Governor William Milliken.[4] With bipartisan support, the Michigan Legislature passed the Waiver of Tuition for North American Indians Act in 1976 (PA 174). Under this act, which was modeled on legislation passed in the State of Minnesota, the ITW Program provided that community or junior colleges, public colleges, and public universities shall grant free tuition to certain North American Indians. When originally passed, the program applied only to persons who were:

1) Full-time students;

2) Legal residents of the state for at least eighteen months; and

3) Certified one-half quantum blood Native American by the Michigan Commission on Indian Affairs.

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[1] Martin J Reinhardt, "The Pre-Legislative History of the Michigan Indian Tuition Waiver," Master's Degree, Central Michigan University (November 1998), 56-58.

[2] The Indian Affairs Commission Act was repealed and replaced by 1972 PA 195.

[3] Reinhardt, "Pre-Legislative History of the MITW," 86-97.

[4] *Ibid.*, 97-103.

In response to protests that the criteria were too strict and that the Federal Bureau of Indian Affairs required only one-quarter quantum blood for participation in its programs, the Michigan Legislature, with the passage of 1978 PA 505, revised the ITW Program as follows:

1) The definition of "North American Indians" was expanded to include those with one-quarter quantum blood, instead of the previous requirement of one-half quantum blood;

2) The state residency requirement was decreased from eighteen months to twelve months; and

3) Qualified participants were allowed to attend school on a part-time or summer school basis and still receive the waiver.

Further, in order not to burden unfairly any one specific school which might have a disproportionate share of Indian students who would have their tuition waived by law, a reimbursement program was set up through the Michigan Commission on Indian Affairs. Previously, schools had simply waived tuition and were required to shoulder the cost themselves.

This program was further expanded in 1993 with PA 106 which extended reimbursement privileges to federal tribally controlled community colleges in the State of Michigan if they met the accreditation criteria. Though not mentioned specifically in the act, according to an analysis prepared by the House Legislative Analysis Section, Bay Mills Community College in Brimley was the only such school in Michigan.

INDIAN TUITION WAIVER STUDENT RECIPIENT PROFILE

In 1996, about 2,700 students were enrolled in the ITW Program. According to a 1996 study of the program conducted, in part, by Michigan State University, typical ITW Program recipients, of whom approximately 70 percent of those enrolled completed some sort of certificate or degree, were:

- First generation college students;
- Part-time college students;
- Unmarried females with 2-4 dependents;
- 30 years of age;
- $22,000 mean gross annual income; and
- Not eligible for the vast majority of other forms of financial aid.[5]

[5] Michigan State University, The Native American Institute, Urban Affairs Programs et al., *A Descriptive Study of the Michigan Indian Tuition Waiver Program*, (February 1996), 63-64.

EFFORTS TO REPEAL THE INDIAN TUITION WAIVER PROGRAM

In 1981, Senator Alvin DeGrow sponsored Senate Bill No. 426, an early effort to repeal the ITW Program. Supporters of the bill, in part, argued that the ITW Program was:

- Discriminatory because it provided tuition forgiveness for a single group of people and without regard to a person's financial status; and

- An expensive luxury that the state no longer could afford during an economic recession.

Opponents of the bill, in part, argued:

- The state could not lawfully rescind its treaty and Comstock Agreement commitments to educate Native American students for free; and

- The program had proven to be beneficial and had served as an incentive for Native American high school graduates.

This measure died in the Senate Committee on Education.

The next significant effort to eliminate the program occurred in the aftermath of a 1994 Michigan Office of the Auditor General performance audit of the Michigan Commission on Indian Affairs, Department of Civil Rights. One of the primary purposes of the audit was to determine if the commission, from October 1, 1990, through December 31, 1992, was effective in managing the ITW Program.

The audit concluded, in part, that:

- The commission had not developed a performance measurement system to evaluate the effectiveness of the ITW Program;

- The commission did not have a centralized ITW Program system. Since the commission processed the ITW Program applications and the Michigan Department of Education reimbursed the colleges and universities for the number of waivers granted, the commission could not determine, for example, the number of credit hours taken by each student and the length of time taken by each student to earn a degree;

- The commission could not determine the total number of degrees earned during a predetermined period of time and the cost to the state for each degree;

- The commission, because it did not maintain a control log of applicants requesting to participate in the ITW Program, did not readily know who or how many individuals applied or were determined to be eligible or ineligible; and

- The commission did not require applicants to provide proof of legal residency to meet the statutory residency requirements.

In response to the auditor general's report, Representative Timothy Walberg sponsored several amendments to the House Appropriations Committee substitute (H-1) to the Senate's Higher Education Appropriations bill (1994 PA 312). The amendments would have required:

- The Michigan Department of Education to take more control over the ITW Program;
- The department to keep track of graduation rates and employment rates of those participating in the program;
- Participants to be enrolled in degree-granting programs;
- Participants to make satisfactory academic progress; and
- Participants to be legal state residents for the year preceding enrollment.[6]

Though the committee substitute (H-1) passed the House on a vote of 88 to 9, the bill was nonconcurred in by the Senate. The Walberg amendments were omitted from the adopted conference report.

In February 1995, Governor John Engler announced that Fiscal Year 1995/96 would be the last year for the ITW Program. Thereafter, Native Americans would be included in the standard financial aid programs. The Governor's Office argued that:

- The state could no longer afford a program that paid for college courses without some consideration for the student's ability to contribute;
- The program provided unlimited funding for higher education with no means test; and
- The emergence of gaming and other economic development programs have greatly improved tribal revenue streams.

The Michigan Commission on Indian Affairs argued that:

- The tribes have a right to the tuition waiver program based on the 1836 Treaty of Washington, the 1934 Comstock Agreement, and several land grant treaties;
- The tribes historically have had no access to higher education because of discrimination; and

[6] *Michigan Report*, June 2, 1994.

- Not all tribes are financially secure and the program provided an incentive to stay in school among a population whose high school dropout rates were well above average.[7]

Among the state universities that would be most adversely affected by the proposed elimination of the waiver program was Lake Superior State University (LSSU). The waiver program in 1995 covered some 1,500 university students at a cost of $281,000. According to the university president, many of those Indian students would not return if the waivers were eliminated because many would not be eligible for the other state scholarship programs yet still not be able to afford school. He said that most of them came from families whose earnings were near or below the poverty line. The average income for the families of waiver students at LSSU was $11,000 with 82 percent earning less than $20,000.[8]

Despite Governor Engler's objection, the House and the Senate Appropriations Subcommittees on Higher Education recommended continuation of the ITW Program for FY 1995-96. Representative Tim Walberg tried to attach an amendment to House Bill No. 4425 (H-1) that would have ended the program, but the proposal lost on a vote of 4 to 18 in the House Appropriations Subcommittee on Higher Education. Representative Walberg, however, did amend (H-1) in order to require those applying for the waiver to prove state residency for the twelve months preceding the application and to make satisfactory academic progress toward a degree or certificate.[9] The committee substitute (H-1) passed the House on an 86 to 17 vote and died in the Senate. The Walberg amendments to (H-1), were retained in the adopted conference report (1995 PA 154).

As passed, Section 307(3) of 1995 PA 154 provided:

> For the purposes of this section, "eligible student" means a student who meets the following criteria:
>
> a) Has been a legal resident of Michigan continuously for 12 months preceding the first term of tuition waiver approval. The dependent student's residency must follow that of the student's parents.
>
> b) Is enrolled or accepted for enrollment in a job training program or a program of study leading to a degree or certification.
>
> c) Maintains satisfactory academic progress as defined by the college or university in which the student is enrolled. The satisfactory progress definition used by a college for the federal student assistance programs

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[7] *Michigan Report*, February 10, 1995. In May 1995, Representative Walberg tried again to repeal the ITW Program. However, House Bill No. 4777 died in the House Committee on Higher Education.

[8] *Michigan Report*, March 6, 1995.

[9] *Michigan Report*, March 9, 1995, March 15, 1995, March 22, 1995, April 5, 1995.

found in title IV of the higher education act of 1965, shall be considered acceptable for this program.

In July 1995, Governor John Engler, while signing into law PA 154, promised that he would veto the next higher education budget that included ITW Program funding.[10]

In February 1996, the Michigan Department of Management and Budget sent an inter-office memo to the Michigan Department of Civil Rights. The memo announced that ITW Program funding would not be included in the FY 1996/97 budget and ordered the Michigan Commission on Indian Affairs to develop a plan for discontinuing the program. The memo also proposed that colleges and universities would be reimbursed for existing waivers if they agreed to support a measure to repeal the statute creating the program.[11]

Senator John J. H. Schwarz, Chair of the Higher Education Appropriations Subcommittee, supported the elimination of the ITW Program as long as waiver amounts were folded into higher education base per-pupil funding. Senator Schwarz proposed that each university be granted the average taken over a three-year period it received as waiver reimbursements as part of its base appropriations while eliminating specific language or a specific line item in Senate Bill No. 850, the higher education appropriation bill for FY 1996/97.[12]

Senate Bill No. 850 (S-1) passed the Senate on a vote of 25 to 12 and was referred to the House Higher Education Appropriations Subcommittee. On the House floor, Representative Walberg attempted to amend the substitute (H-1) to set standards on state residency, on students' progress toward graduation, and on maintaining satisfactory academic levels for participants of the ITW Program. The measure was defeated on a vote of 35-62. Opponents of the amendment argued that because ITW Program revenue was folded into the base per-pupil funding, the revenue was not subject to boilerplate language.[13] Consequently, under 1996 PA 295 (Senate Bill No. 850), the ITW Program was removed as a line item in the higher education budget and program funding was folded into the base per pupil funding of each state university and college. Continuation of the program thus depends on colleges and universities deciding to allocate state funding to tuition reimbursement.

In FY 1996/97, the following state revenue was appropriated to reimburse universities for ITW Program grants extended the previous academic year. According to the Michigan Senate Fiscal Agency, because ITW grants are no longer a line item, the State of

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[10] *Michigan Report*, July 11, 1995.

[11] *Michigan Report*, February 6, 1996.

[12] *Michigan Report*, February 8, 1996, March 19, 1996.

[13] *Michigan Report*, May 16, 1996.

Michigan has no way to determine the amount of ITW revenue each university and community college provides in free tuition.[14]

Indian Tuition Waiver Program
FY 1996-97 State Appropriation

University	State Appropriation
Central Michigan University	$144,117
Eastern Michigan University	103,478
Ferris State University	156,380
Grand Valley State University	114,121
Lake Superior State University	276,146
Michigan State University	313,968
Michigan Technological University	58,509
Northern Michigan University	264,054
Bay Mills Tribal College	100,000
Oakland University	50,610
Saginaw Valley State University	37,266
University of Michigan-Ann Arbor	432,567
University of Michigan-Dearborn	58,541
University of Michigan-Flint	54,531
Wayne State University	169,537
Western Michigan University	111,851
Total Universities	$2,445,676

*Northern Michigan University serves as the fiscal agent for Bay Mills.

Source: Michigan Senate Fiscal Agency and House Fiscal Agency, *Fiscal Year 1999-2000 Higher Education Appropriations Report*, September 1999, 21.

[14] Michigan Senate Fiscal Agency and House Fiscal Agency, *Fiscal Year 1999-2000 Higher Education Appropriations Report*, (September 1999), 21.

CONCLUSION

Of all of America's racial groups, Native Americans are among the least educated. Nationally, about 6 percent of Native Americans have earned bachelor's degrees. In contrast, 23 percent of White Americans, 12 percent of African Americans, and 7 percent of Hispanics have such degrees. It is likely, however, that the percentage of Native American Michigan college graduates is higher than the national average because of the Michigan Indian Tuition Waiver (ITW) Program. Since 1976, when the program was created, 15,000 Native Americans have enrolled in the program. Twenty years later, approximately 70 percent of those enrolled completed some sort of certificate or degree.[15]

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[15] Michigan State University et al., *A Descriptive Study of the Michigan Indian Tuition Waiver Program*, i-ii, 63-64.

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